Kathleen Hartnett White, *Chairman*
Larry R. Soward, *Commissioner*
H. S. Buddy Garcia, *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 11, 2007

TO: Persons on the attached mailing list.

RE: IESI TX Landfill LP
Permit No. 2332

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** Unless a timely request for contested case hearing or reconsideration is received (see below), the TCEQ executive director will act on the application and issue the permit.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the Gladys Johnson Ritchie Public Library, 626 College Street, Jacksboro, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

How To Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

(1) Your name, address, daytime telephone number, and, if possible, a fax number.

(2) If the request is made by a group or association, the request must identify:
   (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
   (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.

(3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.

(4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

How To Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be in writing and must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter: You should submit your request to the following address:

LaDonna Castañuela, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,

LaDonna Castañuela
Chief Clerk

LDC/cz

Enclosures

MAILING LIST
for
IESI TX Landfill LP
Permit No. 2332

FOR THE APPLICANT:

John Gustafson, Vice President
IESI TX GP Corporation
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Fort Worth, Texas 76177

Kenneth Welch, P.E.
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Kerry Russell
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Texas Heritage Plaza, Suite 103
102 West Morrow
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John Vay, Attorney
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Austin, Texas 78746

INTERESTED PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR:

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Jeff Davis, Technical Staff
Texas Commission on Environmental Quality
Waste Permits Division
MSW Permits Section MC-124
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FOR OFFICE OF PUBLIC ASSISTANCE:

Ms. Bridget Bohac, Director
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FOR PUBLIC INTEREST COUNSEL:

Mr. Blas J. Coy, Jr., Attorney
Texas Commission on Environmental Quality
Public Interest Counsel MC-103
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FOR THE CHIEF CLERK:

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Office of Chief Clerk MC-105
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JERRY ADAMS
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JACKSBORO TX 76458-3215

CHARLES E ANDERSON
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JACKSBORO TX 76458-3251

CLARA ASLIN
PO BOX 1332
MINERAL WELLS TX 76068-1332

TOMMY ASLIN
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MINERAL WELLS TX 76068-1332

GENE AUTRY
CONCERNED CITIZENS OF JACK COUNTY
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JACKSBORO TX 76458-3215

PEGGY AUTRY
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JACKSBORO TX 76458-3215

CURTIS BENSON
506 REGINA CT
EULESS TX 76039-2021

J C BENSON
506 REGINA CT
EULESS TX 76039-2021

DANNY BLANKENSHIP
1851 ELENBURG RD
PERRIN TX 76486

CECELIA & STEPHEN BODINE
601 CRAZY BO LN
PERRIN TX 76486-3131

STEPHEN BODINE
601 CRAZY BO LN
PERRIN TX 76486-3131

PEGGY EDWARDS BOWEN
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JACKSBORO TX 76458-1019

NATALIE BURNARD
150 ELENBURG RD
PERRIN TX 76486-3120

PHILIP BURNARD
150 ELENBURG RD
PERRIN TX 76486-3120

TED BURNS
PO BOX 93
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1026 RANCH VIEW RD
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JEAN CANNON
PO BOX 103
PERRIN TX 76486-0103

JAMES CHAPMAN
525 W ARCHER ST
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620 CALF RANCH RD
PERRIN TX 76486-3137

DONALD COX
4901 TWO BUSH RD
PERRIN TX 76486-3143

MAUREEN CRUZE
1191 S GIBTOWN RD
PERRIN TX 76486-3310

BRAD DIXON
446 W LIVE OAK ST
JACKSBORO TX 76458-1750

M BRAD DIXON
446 W LIVE OAK ST
JACKSBORO TX 76458-1750

BONNIE DODON
PO BOX 203
PERRIN TX 76486-0203

MRS BONNIE DODSON
PO BOX 203
PERRIN TX 76486-0203

THE HONORABLE CRAIG ESTES
TEXAS SENATE
PO BOX 12068
AUSTIN TX 78711-2068

BILL EVANS
198 BUSH BRANCH LN
PERRIN TX 76486-3177

HELEN EVANS
198 BUSH BRANCH LN
PERRIN TX 76486-3177

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2000 JORDAN RD
POOLVILLE TX 76487-3030

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THOMAS M KYSER
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LANNA WIMBERLY MOXLEY
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GREENSBORO NC 27403-1026

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INA JO LEE
PO BOX 136
PERRIN TX 76486-0136

PAULETTE MURRAY
PO BOX 87
PERRIN TX 76486-0087

THE HONORABLE RICHARD L HARDCASTLE TE
PO BOX 2910
AUSTIN TX 78768-2910

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DALLAS TX 75238-2151

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KATHY PRUITT
PO BOX 266
PERRIN TX 76486-0266

MILESSA HODGES
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JACKSBORO TX 76458-3614

LOU MCKAUGHAN
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RAY G PRUITT
12750 HIGHWAY 199 W
POOLVILLE TX 76487-2320

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JACK MILTON
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BRIDGEPORT TX 76426-5568

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PERRIN TX 76486-3128

ROSALEE MOORE
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PERRIN TX 76486-3144

CHARLES W REED
504 W ARCHER ST
JACKSBORO TX 76458-1634

VIRGINIA KING
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PERRIN TX 76486-3128

GORDON & JANELDA MORRIS
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LUTHER RILEY
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JACKSBORO TX 76458-1513

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PERRIN TX 76486-3307

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PARADISE TX 76073-4638

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APT A
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BOYD TX 76023-0526

FRANCES WIMBERLY
PO BOX 69
PERRIN TX 76486-0069

TCEQ PROPOSED PERMIT NO. 2332

APPLICATION BY IESI TX LANDFILL LP FOR MSW PERMIT NO. 2332	§ § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response or RTC) on the permit application by IESI TX Landfill LP, for the Jacksboro Landfill for Permit No. 2332. As required by Title 30 TEX. ADMIN. CODE §55.156 [30 TAC §55.156] (Rule), before an application is approved, the ED prepares a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk received timely comment letters and comments at the Public Meeting of October 18, 2005, *see* Commenters List. This Response addresses all timely public comments received, whether or not withdrawn. If you need more information about this permit application or the permitting process please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Description of Facility

The proposed Jacksboro Landfill is located in Jack County, approximately 13 miles southeast of the City of Jacksboro and approximately 1.25 miles south of the intersection of State Highway (SH) 199 and Farm to Market (FM) Road 1156. The proposed landfill is a Type I municipal solid waste landfill, with a total disposal capacity (waste and daily cover) of approximately 50,000,000 cubic yards or 42,500,000 cubic yards of waste. The total area within the permit boundary is approximately 274.64 acres. Approximately 202 acres will be used for actual waste disposal operations. The facility will consist of a site entrance with appropriate security fencing, an asphalt-paved entrance road for the first ¼ mile from the connection with SH 199, all-weather access roads, gatehouse, scales, a maintenance building, an office building, soil stockpiles, and the solid waste disposal area. Structures for surface drainage and storm water run-on/runoff controls include a perimeter drainage system to convey storm water runoff around the site, berms, ditches, detention ponds, and associated drainage structures.

Procedural Background

This permit application is for a new permit. The permit application was received on April 5,

2005, and declared administratively complete on April 29, 2005. The Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit was published on May 13 and 17, 2005, in the *Jacksboro Gazette-News* and *Jack County Herald*. The TCEQ held a public meeting for the application on October 18, 2005 in Jacksboro, Texas. The application was declared technically complete on October 25, 2006. The Notice of Application and the Preliminary Decision was published on December 22 and 26, 2006, in the *Jack County Herald* and *Jacksboro Gazette-News*. The public comment period ended on January 25, 2007. The ED has reviewed the application and found that it meets the required regulations and has issued a draft permit.

Access to Rules, Laws and Records

The permit application was reviewed under the 30 TAC Chapter 330 rules effective prior to March 27, 2006. All references to 30 TAC Chapter 330 rules are those in effect prior to March 27, 2006. These rules may be located at the following web link: http://www.tceq.state.tx.us/permitting/waste_permits/msw_permits/msw_330rules_old.html

Secretary of State website: www.sos.state.tx.us

TCEQ Website: www.tceq.state.tx.us

Commission records on the IESI TX Landfill LP, Jacksboro Landfill are available for viewing and copying and are located at TCEQ Main Office in Austin, Park 35 Circle, Building E, Room 103 and at the TCEQ's Region 3 Office, 1977 Industrial Blvd., Abilene, Texas 79602-7833.

If you would like to file a complaint, you may contact the Commission at 888-777-3186 or you may contact the Regional office at the above-mentioned location, phone number 325-698-9674. If the facility is found to be out of compliance it will be subject to enforcement action.

Commenters List:

1. Adams, Jerry (former Jack County Commissioner, Precinct 2)
2. Aslin, Tommy
3. Autry, Gene (Two Bush Community Action Group)
4. Benson, J. C.
5. Blankenship, Danny (Two Bush Community Action Group)
6. Bodine, Cecelia (Two Bush Community Action Group)
7. Bodine, Stephen (Two Bush Community Action Group)
8. Bowen, Peggy Edwards (Two Bush Community Action Group)
9. Cameron, Jean
10. Curze, Maureen M. (Two Bush Community Action Group)
11. Dixon, M. Brad
12. Dodson Bonnie

13. Estes, Craig (State Senator)
14. Farris, Maudie
15. Faulkner, Martha Franks
16. Franks, Ruth H. (Two Bush Community Action Group)
17. Hardcastle, Richard L. "Rick" (State House of Representatives)
18. Henderson, James H. (Two Bush Community Action Group)
19. Hunter, Kenneth R.
20. Mason, Kit
21. McGrath, Kevin (Mitchell Resort and RV Park)
22. Moore, Rosalee
23. Moxley, Lanna W.
24. Patterson, Joan
25. Perales, Marisa (Lowerre & Frederick Attorneys at Law, Counsel for Two Bush Community Action Group)
26. Pruitt, Kathy and Roger Pruitt
27. Reed, Doris (Mitchell Resort and RV Park)
28. Richards, Lori
29. Sewell, Bryson K. (Jack County Commissioner, Precinct 2)
30. Shields, Larry
31. Sprencel, Gloria
32. Sprencel, Mark
33. Thompson, James R. and Linda Henderson
34. Willingham, Erna (Two Bush Community Action Group)

Outline of Comments

1. **Permit Process**
   - A. Notice
   - B. Administrative Review and Technical Review
   - C. Request for a Contested Case Hearing and a Second Public Meeting

2. **The Application**
   - A. General Permit Application Questions
   - B. Validity of Investigations
   - C. Inadequacies

3. **Land Use**
   - A. Property Values
   - B. Buffer Zone and Screening
   - C. Incompatible Land Use
   - D. Alternative Location for Landfill

4. **Groundwater**

5. **Gas**

6. **Vectors**

7. **Financial Assurance**

8. **Health Concerns**

9. **Nortex Regional Planning Commission**

10. **Miscellaneous**
    A. General Questions and Comments
    B. Local and Elected Officials

Comments and Responses

1. **Permit Process**

   A. Notice

COMMENT No. 1:

J. C. Benson, Danny Blankenship and Bryson K. Sewell commented that IESI revised the application on several occasions during the last 18 months without notice that the revisions had been submitted, and that the public was unaware of the changes and deprived of the opportunity for meaningful participation. Marisa Perales commented that the transfer of the application to a new applicant requires a restart of both the administrative and the technical review process and, therefore, a new public notice.

RESPONSE No. 1:

The TCEQ's notice requirements at 30 TAC §§39.405, 39.413 and 39.501 require that notice be published in the paper of largest general circulation in the county and provided to the adjacent property owners identified in the permit application. Here, the original Applicant (City of Jacksboro) published the Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit on May 13 and 17, 2005, in the *Jacksboro Gazette News* and *Jack County Herald*. The current Applicant (IESI TX Landfill LP) published the Notice of Application and Preliminary Decision on December 22 and 26, 2006, in the *Jack County Herald* and *Jacksboro Gazette-News*. The Applicant also provided notice to the adjacent property owners identified in the application and to interested persons on the mailing list maintained by the TCEQ Office of the Chief Clerk.

The ED notes that the Texas Solid Waste Disposal Act and the TCEQ's rules require that notice be provided to all addresses and property owners within ½ mile of a new solid waste disposal site; however, this requirement only applies to the notice of hearing, not the notice of receipt of application or the notice of preliminary decision. The ED also notes that notice is not required for minor changes made during the technical review. The notice of the change in the Applicant is satisfied by the Notice of Application and Preliminary Decision.

The permit application, statement of basis/technical summary, the ED's preliminary decision, and the draft permit are available for viewing and copying at the Gladys Johnson - Ritchie Public Library, 626 College Street, Jacksboro, Texas 76458-1655. Further information may also be obtained by calling John Gustafson, Vice President, IESI TX GP Corporation (General Partner) at (817) 632-4000.

COMMENT No. 2:

Marisa Perales commented that there was not proper notice of the application. Ms. Perales also commented that there was not: (A) notice in Spanish; (B) accurate information in the notice; (C) proper notice to property and mineral interest owners and residents within ½ mile; and (D) notice published in accordance with the law.

RESPONSE No. 2:

The TCEQ adopted amendments to 30 TAC Chapter 39, Public Notice, requiring notice in an alternative language for certain applications. Municipal solid waste permit and registration applications filed on or after November 30, 2005, are subject to the alternative language notice newspaper publication requirements. This permit application was filed on April 5, 2005, and therefore not subject to the alternative language notice newspaper publication requirements.

Ms. Perales did not provide specific comments regarding inaccuracies in the notice, and how proper notice was not provided to property owners, mineral interest owners, and residence within ½ mile. The ED is therefore unable to respond.

B. Administrative Review and Technical Review

COMMENT No. 3:

Marisa Perales commented: (A) the application was not properly submitted in accordance with TCEQ rules; (B) TCEQ previously has allowed no more than 2 notice-of-deficiencies (NODs); (C) TCEQ rules provide that the technical review period should not exceed 75 working days; (D) the applicant has been allowed to make too many revisions to the permit; and (E) the "piecemeal" application is inconsistent with the manner in which other landfill applications have been reviewed.

RESPONSE No. 3:

The application received on April 5, 2005 and declared administratively complete on April 29, 2005, was submitted by the City of Jacksboro as the applicant, and identified IESI TX Landfill LP (IESI) as the operator. The technical review and the first technical notice of deficiency (NOD) were completed within 54 days of the application being declared administratively complete, meeting the 75-day timeframe. Among the issues identified in the first technical NOD was that the application was not submitted in accordance with §305.43(b), which requires that when a facility is owned by one party and operated by another, the application must be submitted by the operator. Formatting and other issues related to changing the name of the applicant resulted in changes to the application being submitted separately from revisions to address other technical NOD issues. Concurrently, and at the request of the MSW Permits Section, revisions to the Site Operating Plan (SOP) were being processed through separate NODs. At the time the application was undergoing technical review, the MSW Permits Section was conducting an SOP call-in for all MSW facilities. The SOPs (Part IV of the permit application) were being reviewed in conjunction with that of operating MSW landfills to better ensure consistency. Together with the revisions to Part I-III of the application referenced above, these factors resulted in a greater-than-usual number of both NODs and revisions to the application. MSW regulations do not limit the number of revisions that can be submitted during the application process. Notice of the changes was provided in the Notice of Application and Preliminary Decision mailed by the Agency on December 7, 2006, and published in The Jack County Herald and Jacksboro Gazette-News on December 22, and December 26, 2006, respectively.

C. Request for a Contested Case Hearing and a Second Public Meeting

COMMENT No. 4:

M. Brad Dixon, James H. Henderson, Roger and Kathy Pruitt, Gloria Sprencel, and James R. and Linda Henderson Thompson, requested a contested case hearing. Mr. Dixon also requested that TCEQ hold a second public meeting.

RESPONSE No. 4:

To request a contested case hearing, you must include the following items in your request: Your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why

the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the ED will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

In order to be granted a second public meeting, the ED must determine if there is "substantial public interest," as defined under 30 TAC §39.501. Substantial public interest is demonstrated if a request is filed by: A local governmental entity with jurisdiction over the location at which the facility is proposed to be located by formal resolution of the entity's governing body; A council of governments with jurisdiction over the location at which the facility is proposed to be located by formal request of either the council's solid waste advisory committee, executive committee, or governing board; A homeowners' or property owners' association formally organized or chartered and having at least ten members located in the general area in which the facility is proposed to be located; or A group of ten or more local residents, property owners, or businesses located in the general area in which the facility is proposed to be located.

The ED has determined that there has not been "substantial public interest," as defined under 30 TAC §39.501, to hold a second public meeting.

2. **The Application**

A. General Permit Application Questions

COMMENT No. 5:

Lanna W. Moxley asked the following questions: (A) will a barrier be erected all around the landfill; (B) what will be done about the smells that envelope the area; (C) what will happen to the water supply under the landfill when the liner starts to decay; and (D) what is the liability for the owner when contamination occurs?

RESPONSE No. 5:

(A) Pursuant to 30 TAC §330.116, public access to all municipal solid waste facilities must be controlled by means of artificial barriers, natural barriers, or a combination of both, appropriate to protect human health and safety and the environment. The Applicant complied with these regulatory requirements, and the information is in Parts III/IV of the application.

Access will be limited at the permit boundary by a barbed-wire fence. A site entrance gate will be located approximately ¾ mile from the State Highway 199 connection.

(B) Pursuant to 30 TAC §330.125, the Site Operating Plan must have an odor management plan that addresses the sources of odors and includes general instructions to control odors or sources of odors. Plans for odor management must include the identification of wastes that require special attention. The Applicant complied with these regulatory requirements, and the odor management plan is in Part IV of the application.

(C) Pursuant to 30 TAC §330.55, the Site Development Plan must provide information required for drinking water protection in accordance with §§330.200-330.206. The proposed liner system consists of a minimum 24-inch-thick compacted clay liner with a hydraulic conductivity of no more than 1×10^{-7} centimeters/second (cm/sec), overlain by a 60-mill high density polyethylene (HDPE) geomembrane liner, a leachate collection system drainage geocomposite layer, and a minimum 24-inch-thick soil protective cover layer. The Applicant complied with these regulatory requirements, and the information is provided in Part III of the application. It is anticipated that the liner will function for the life of the site and during the post-closure period.

(D) The Applicant must comply with TCEQ rules, operate in a manner that will prevent an unauthorized release, and is responsible for any corrective action and subject to enforcement should contamination occur.

COMMENT No. 6:

Gloria Sprencel and Rosalee Moore commented on how the landfill will affect the water.

RESPONSE No. 6:

The landfill will be constructed with a composite liner and leachate collection system meeting the groundwater protection design criteria as stated in 30 TAC § 330.200(a)(2). The liner system will incorporate a Leachate Collection System (LCS) designed to meet the requirements of 30 TAC §§ 330.56(o) and §330.201.

As defined in 30 TAC § 330.56(o), contaminated water is water which has come into contact with waste, leachate, or gas condensate. Storm water which comes into contact with solid waste will be considered contaminated water. Contaminated storm water at the working face will be contained by run-on/run-off berms. Contaminated surface water and groundwater may not be placed in or on the landfill. Untreated contaminated water may not be discharged from the site.

If the landfill is constructed as designed, it is not anticipated to have adverse effects and unauthorized discharge to surface or groundwater.

COMMENT No. 7:

Joan M. Patterson asked where the Applicant will get its water to operate the landfill.

RESPONSE No. 7:

The TCEQ rules do not require the Applicant to identify sources of water to operate the landfill.

COMMENT No. 8:

Lori Richards asked what assurances they have that the disposal of toxic waste from oil field drilling will not affect drinking water.

RESPONSE No. 8:

The application and draft permit excludes the acceptance of Class 1 nonhazardous industrial waste, hazardous wastes, PCB wastes, radioactive wastes, liquid wastes, infectious medical waste, and other waste prohibited by TCEQ regulations.

COMMENT No. 9:

James R. Thompson and Linda Henderson Thompson question: (A) the adequacy of the plan for firefighting; (B) if the Applicant has evaluated the possible consequences of active mineral development upon the hydrology underlying the site; and (C) if the Applicant has evaluated the consequences of a breach in containment and whether the Applicant has presented a feasible plan for dealing with such an event.

RESPONSE No. 9:

(A) Pursuant to 30 TAC §330.115, the Site Operating Plan must contain a fire protection plan that identifies the fire protection standards to be used at the facility and how personnel are trained. The Applicant complied with these regulatory requirements, and the fire protection plan is in Part IV of the application.

(B) The TCEQ rules do not require the Applicant to evaluate potential impacts from mineral development.

(C) *See* Response Nos. 5(C) and 6. General Permit Application Questions.

COMMENT No. 10:

Mark Sprencel asked how the waste company will monitor toxic waste, pesticides, and needles from being put in the garbage. James H. Henderson commented that oilfield hazards are a

sufficient reason for the TCEQ to deny the application. Lori Richards commented about disposal of toxic waste from oil field drilling.

RESPONSE No. 10:

Pursuant to 30 TAC §330.136(b)(6), the landfill is prohibited from accepting hazardous or toxic waste, except for municipal hazardous waste from a conditionally exempt small quantity generator (CESQG). Municipal hazardous waste from a CESQG may be accepted at a Type I municipal solid waste landfill without further approval from the ED provided the amount of waste does not exceed 220 pounds (100 kilograms) per month per generator, and provided the landfill owner or operator authorizes acceptance of the waste. The Applicant complied with these regulatory requirements, and the disposal of CESQG is in Part IV of the application. Needle disposal by households is not prohibited. Treated medical waste may be managed as routine municipal solid waste. Treated medical waste that contains whole nonencapsulated hypodermic needles or syringes or intact red bags must be manifested to ensure proper disposal.

Special waste from health care related facilities, which have been treated, may be accepted. Other special waste may also be accepted for disposal as stipulated in 30 TAC §330.136. *See also*, Response Nos. 8. General Permit Application Questions, and Response No. 21. Inadequacies.

The MSW rules do not require addressing oilfield hazards. The Commission makes the determination of whether to issue or deny the required permits.

B. Validity of Investigations

COMMENT No. 11:

Commenters stated that rainfall data used for surface drainage was from Abilene, Texas, which results in the drainage calculations being invalid. Marisa Perales and other commenters asked why local rainfall data was not used.

RESPONSE No. 11:

The Applicant states that the rainfall data used in all of the surface water drainage calculations in Part III (Attachment 6) was taken from the National Weather Service (NWS) Technical Paper 40 (TP-40) (NWS, 1961) and from Hydro 35 (NWS, 1977) for Jack County, Texas. The Applicant also states that synthetic precipitation data for Abilene, Texas was used in the Hydrologic Evaluation of Landfill Performance (HELP) model included in Part III (Attachment 15), and Abilene was selected from the list of U.S. cities because it is the closest city with similar characteristics to Jacksboro provided by the HELP model. The Applicant also states that the design of the leachate collection system provided in Part III (Attachment 15) is consistent with TCEQ rules and regulations and exceeds the minimum capacity requirements necessary based on

the leachate generation rate that is predicted by the HELP model. The ED has determined that the information provided demonstrates compliance with TCEQ rules.

C. Inadequacies

COMMENT No. 12:

Joan M. Patterson commented that the archeological investigation is inadequate and that a serious archeological review should be made that is not within the purview of the TCEQ, and the Texas Historical Society should look into the review. Ms. Patterson also commented that the area contains Indian paraphernalia such as arrowheads and tomahawks and the area should be preserved. Other commenters also expressed concerns about the archaeological investigation.

RESPONSE No. 12:

The Applicant coordinated its investigation of archaeological and historic sites with Archaeological and Environmental Consulting and the Texas Historical Commission, Division of Archaeology. The Applicant reports that a detailed survey of cultural resources was performed for the site. The survey report was submitted to the State Historic Preservation Officer, who concluded that the project would have no effect on National-register eligible or listed properties or State Archaeological Landmarks and that the project may proceed. The ED has determined that the information provided demonstrates compliance with TCEQ rules. The archeological survey is in Part II of the application.

COMMENT No. 13:

Marisa Perales commented that the groundwater monitoring system is inadequate because: (A) the proposed system does not meet the requirements of the proper number and location of wells, depths, and/or locations of screens to collect representative samples of the groundwater at various levels in the aquifer system for the different densities of wastes likely to contaminate the aquifer system; (B) the system is not properly designed to detect releases of contaminated water from the landfill; (C) the system is not designed based on adequate site data; (D) the application does not properly identify up gradient and down gradient wells or the point of compliance; (E) the application does not propose an adequate procedure for collecting background data on the groundwater; (F) the applicant has not qualified for any alternative design under §330.231(c) or other rule.

RESPONSE No. 13:

The design of the groundwater monitoring system has been certified by a qualified groundwater scientist, John Michael Snyder, P.G. (Texas Professional Geoscientist License No. 595). Mr. Snyder has represented in both the Geology and Groundwater Characterization Reports in the permit application that the groundwater monitoring system is designed so as to detect release of

leachate from the facility. Mr. Snyder submitted a Soil Boring Plan to the ED, which obtained the field data on which the groundwater monitoring system was designed. This data also included the measurement of water levels in various piezometers so as to determine a potentiometric surface for groundwater at the site. Additionally, the Applicant has submitted a Groundwater Sampling and Analysis Plan in Part III (Attachment 11), which addresses the procedures for collecting background water samples. The ED has determined that the information provided demonstrates compliance with TCEQ rules.

COMMENT No. 14:

Marisa Perales and other Commenters commented that surface water controls are inadequate because: (A) there are inadequate controls to prevent contamination of storm waters by wastes, leachate, or spills of fuels or other materials at the landfill; (B) the designs for the channels and ponds are not adequate; (C) drainage controls have not been designed to assure historic levels of runoff and to protect surrounding properties; (D) the application shows that there will be significant changes to the drainage patterns at the landfill and off site; (E) the changes to the drainage patterns will result in damage to property off site including increased erosion and loss of water supplies; and (F) the design to avoid flooding of parts of the landfill is not adequate.

RESPONSE No. 14:

The application contains adequate design to prevent flooding from the required 100-year flood event, including the southeast corner of the landfill near Jasper Creek. In addition, stormwater will be conveyed through perimeter ditches into detention ponds. All debris from the landfill will be detained in the ponds. The ED has determined that the information provided demonstrates compliance with TCEQ rules, and the information is in Part III (Attachment 6).

COMMENT No. 15:

Marisa Perales commented that the application does not adequately consider the presence of mineral development because: (A) the application does not evaluate the extent of mineral development, including minerals that would be mined from the surface or oil and gas; (B) there are a number of oil/gas wells near the site and on the site; (C) there is likely mineral development that has not been identified or considered; and (D) there has not been an adequate evaluation of unplugged or poorly plugged oil and gas wells, exploratory wells and water wells.

RESPONSE No. 15:

The TCEQ rules do not require the Applicant to evaluate mineral development (*See also*, Response No. 9(B). General Permit Application Questions). The Applicant has included the results of the water well and oil and gas well inventories on Figures IA.3 and IID.1 in Parts I/II of the application. All information provided was signed and sealed by Kenneth J. Welch, P.E. (Texas Professional Engineer License No. 60773), to ensure that all information is accurate, and

the application meets all of the rule requirements regarding the listed items. The ED has determined that the information provided demonstrates compliance with TCEQ rules.

COMMENT No. 16:

Marisa Perales commented that the evaluation of endangered species is inadequate because: (A) the application does not provide an adequate evaluation of the existence of endangered or threatened species or the risks of landfill activities for such species; (B) the application and site operating plan do not provide adequate plans for protection of such species and habitats; and (C) the application and site operating plan have not identified or considered the ramifications of landfill activities for the unique and rare species of trees in the area.

Commenters stated that the facility would adversely affect wildlife, including endangered species and habitat.

RESPONSE No. 16:

Pursuant to 30 TAC §330.53(b)(13)(B), the Applicant must consider the impact of a solid waste facility upon endangered or threatened species, and "the facility and the operation of the facility shall not result in the destruction or adverse modification of the critical habitat of endangered or threatened species, or cause or contribute to the taking of any endangered or threatened species." In accordance with 30 TAC §§330.51(b)(8), 330.53(b)(13), and 330.302, the Applicant must demonstrate compliance with the Endangered Species Act under state and federal laws. This demonstration is contained in Part II of the application.

The Applicant communicated with and obtained information from both the Texas Parks and Wildlife Department and the U.S. Fish and Wildlife Service regarding potential impacts. The application states that the results of the on-site investigations conducted by a qualified biologist, indicate that there are no threatened or endangered species found on the site. The application also states that with the exception of the Texas horned lizard and the timber rattlesnake, potential habitat for federal or state listed threatened or endangered species is absent on the site. The application further states that results also indicate the project area may contain preferred habitat, but there were no timber rattlesnakes or suitable den habitats observed, and there were no Texas horned lizards observed.

A detailed avoidance and minimization plan for the timber rattlesnake and Texas horned lizard is in Part IV of the application. The information submitted in the application was determined by the ED to meet the requirements in 30 TAC §§330.51(b)(8) and 330.53(b)(13).

COMMENT No. 17:

Marisa Perales commented that the information on geology and hydrology is inadequate because: (A) There has not been an adequate number of borings at the correct locations and depths for the

evaluation of the geology and groundwater; (B) the application does not contain adequate information on existing surface water, groundwater, oil/gas exploration, water wells, faults, fractures, caves, sinkholes, unstable areas, etc.; (C) the application does not adequately describe the regional or site specific geology and the regional aquifers; (D) the application does not adequately describe the vertical and horizontal flow characteristics of the groundwater or the leachate that will leak from the landfill; (E) the application does not properly characterize the soils; (F) the application does not properly evaluate the availability of water and soils at the site needed for the construction of liner, for cover materials, for dust suppression, etc.

RESPONSE No. 17:

The Applicant has represented that 26 soil borings were advanced at this site, and the locations of the soil borings are shown on Figure 4B2 in Part III (Attachment 4) of the application. Seventeen of the soil borings were advanced to depths at least 30 feet deeper than the elevation of the deepest excavation (EDE), and nine soil borings were advanced to a depth of at least 5 feet deeper than the EDE. The soil borings complied with the Soil Boring Plan dated February 25, 2004, and approved by TCEQ on March 8, 2004, in compliance with 30 TAC §330.56(d)(5)(A)(ii).

The Applicant has also included a description of the site specific geology and the regional aquifer in Attachment 4, as required under 30 TAC §330.56(d). Lithologic descriptions of the subsurface geology and soils are included on the soil boring logs in Attachment 4 (Appendix 4B), and in the text of the Geology Report. In addition, the Applicant has provided the results of the soils tests required under 30 TAC §330.56(d)(5)(B) in Attachment 4 (Appendix 4E). The information submitted in the application was determined by the ED to meet the requirements in 30 TAC, Chapter 330. *See also* Response Nos. 13 and 15. Inadequacies.

COMMENT No. 18:

Marisa Perales commented that the landfill is not properly designed with proper quality control for the liners because: (A) the application and draft permit does not provide for an adequate liner considering the site selected with its shallow water and sandy soils; (B) the geotechnical evaluation for the design of the landfill is inadequate as the slopes and materials for the sidewalls will not assure long-term stability; (C) the design and operating provisions will not protect the liner from puncture during construction or filling or from leaks at seams; (D) the applicant has not proposed an adequate dewatering system; and (E) the applicant does not qualify for alternative designs under Subchapter H. Commenters stated that the liners will eventually leak and also expressed concerns about the proposed liner system.

James H. Henderson requests clarification as to the exact nature and origin of the soil liner and clarification as to how long the synthetic membrane will be functional. Mr. Henderson also asked how the shrinking of the clay liner will be prevented during prolonged droughts.

James R. Thompson and Linda Henderson Thompson commented that the permit does not propose the safety measure of employing double synthetic liner technology which is currently available.

RESPONSE No. 18:

Pursuant to 30 TAC §330.205(a), a landfill must have an approved Soils and Liner Quality Control Plan (SLQCP) prepared under the direction of a licensed professional engineer. The SLQCP is the basis for the type and rate of quality control testing to be recorded during liner construction and reported in the liner evaluation reports. The SLQCP is in Part III (Attachment 10) and was signed and sealed by Gregory W. Adams, P.E. (Texas Professional Engineer License No. 73356), and follows accepted liner construction and testing practice. The SLQCP complies with 30 TAC §330.205, and follows the agency Technical Guidance document for SLQCPs.

The slope stability analysis was prepared and sealed by a licensed professional engineer to ensure accuracy of the analysis and calculations. The slope stability analysis is in the Geotechnical Report of Part III (Attachment 4). The dewatering system design was also prepared and sealed by a licensed professional engineer. The dewatering system design is in the Soil and Liner Quality Control Plan of Part III (Attachment 10).

The liner design proposed in the application is a "composite liner" as defined in 30 TAC §§330.2(24) and 330.200(b), and RCRA Subtitle D. The application does not include an "Alternate Design" under 30 TAC §330.202. The MSW rules do not require installation of a double synthetic liner as part of a composite liner system as defined in the above rules.

The Geotechnical Report in Section 3.10.1 of Part III (Attachment 4), Compacted Soil Liner, states that sandy clay and clay will be available from proposed landfill excavations or on-site borrow sources to provide material for the compacted soil liners. The site stratigraphy is in the Geology Report in Section 2, Subsurface Investigation Report. The average properties of on-site materials are in the Geotechnical Report in Section 3, Table 4-7.

The MSW rules do not stipulate timeframe requirements for functionality of the synthetic membrane, however, it is anticipated that it will function for the life of the site and during the post-closure period. 30 TAC §330.206(e) requires that the surface of a constructed soil liner should be covered with a layer of solid waste within a period of six months.

The information submitted in the application was determined by the ED to meet the requirements in 30 TAC, Chapter 330 Subchapter H.

COMMENT No. 19:

Marisa Perales commented that the application does not present adequate transportation information because there is an inadequate description and inadequate evaluation of: (A) roads;

(B) bridges in the area; (C) weight limits; (D) railroad crossings that will be affected; and (E) the design of the access sites for the landfill to provide adequate offsite parking and maneuvering areas to minimize risks of accidents on and off site and to assure proper access by fire and emergency vehicles during working hours and when the landfill is closed.

Bryson K. Sewell commented that the roads leading to the landfill were not intended for and are not adequate to support the heavy truck traffic. Peggy Edwards Bowen, James H. Henderson, Ruth Henderson Franks, Kit Mason, Marisa Perales, Jean Cameron, Martha Franks Faulkner and Erna Willingham all commented about traffic and/or roads.

RESPONSE No. 19:

TCEQ's consideration of traffic in the MSW permitting process is required by rule. The land use statute in Texas Health and Safety Code (THSC) §361.069, gives TCEQ the authority to consider traffic, and that authority is governed by the following rules:

(A) 30 TAC §330.53(b)(9) requires that applicants provide data on the availability and adequacy of roads that will provide access to the site; the volume of vehicular traffic on access roads within one mile of the proposed facility, both existing and expected, during the expected life of the proposed facility; and the volume of traffic expected to be generated by the facility on the access roads within one mile of the proposed facility;

(B) 30 TAC §330.11(b) states that if primary access to a proposed facility is provided by a state maintained highway, the TCEQ must solicit a recommendation from TxDOT regarding the adequacy and design capacity of the roadway to safely accommodate the additional volumes and weights of traffic expected to be generated by the facility; and

(C) 30 TAC §330.51(b)(6)(c) requires that applicants submit documentation of coordination with TxDOT for traffic and location restrictions.

TCEQ and Applicant coordinated with TxDOT during the permit review process by requesting a review of the Applicant's plans. TCEQ received a response from TxDOT indicating that they had no objection to the proposed application.

The Applicant provided a transportation analysis in Part I/II of the application in compliance with 30 TAC Chapter 330. The proposed landfill is expected to account for about 3.4 percent of the total traffic east on SH 199, about 0.8 percent of traffic west on SH 199, and about 3.7 percent of the total traffic on FM 1156, based on projected 2005 traffic volumes. The proposed landfill is expected to account for about 6.2 percent of the total traffic east on SH 199, about 1.3 percent of the total traffic west on SH 199, and 6.7 percent of the total traffic on North FM 1156, based on the 2070 projected volumes. Correspondence from the Texas Department of Transportation states that the design and capacity of the existing and proposed roadways in the area are adequate to accommodate a possible increase in traffic generated by the proposed landfill. The

information submitted in the application was determined by the ED to meet the requirements in 30 TAC, Chapter 330.

COMMENT No. 20:

Marisa Perales commented that the application does not demonstrate adequate proof of property interests, including adequate interests in the site to protect against inconsistent future uses, such as mineral development.

RESPONSE No. 20:

The property legal description and property owner affidavit are in Part I of the application as required by 30 TAC §§330.52(b)(6) and 330.52(b)(7) respectively. Proof of mineral development interests or other property interests are not required by Chapter 330.

COMMENT No. 21:

Marisa Perales commented that the site operating plan is inadequate because: (A) the applicant has not provided adequate details and enforceable requirements to guide day-to-day operations and to allow the enforcement of the SOP; (B) the individual plans are only restatements of the rules or plans to develop plans; (C) the plan does not provide the detail required for training and procedures to allow the employees to use the plans; (D) the operational procedures does not prevent the acceptance of lead acid storage batteries, used motor oil, used oil filters, whole scrap tires, items containing chlorinated fluorocarbons, liquid waste, hazardous waste, radioactive wastes or polychlorinated biphenyls; (E) the plan does not prevent or assure proper response to fires, and other safety or health hazards; (F) the plan does not prevent or minimize rats, insects, birds and other carriers of disease; (G) the plan does not prevent or minimize litter or windblown waste; (H) the plan does not prevent or minimize the ponding of water on the landfill; (I) the plan does not prevent or minimize odors; (J) the plan does not provide adequate emergency response and contingency plans for fires, accidents, injuries spills, and other such conditions; (K) the plan does not assure adequate coordination with local fire and emergency response services or provide for adequate on site equipment, water, soil, and personal equipment for on-site responses; (L) the plan does not assure that the landfill will have adequate controls over access by unauthorized persons; and (M) the plan does not provide for adequate control of animal or human scavenging.

RESPONSE No. 21:

The Site Operating Plan (SOP) is contained in Part IV of the application; the SOP has been carefully reviewed and meets the minimum requirements specified in 30 TAC §§330.111-139. The SOP includes references to the rules in Chapter 330, Subchapter F (Operational Standards For Solid Waste Land Disposal Sites). The SOP provides general instructions, details, and procedures for personnel and training in Section 3. The SOP also provides procedures for detection and prevention of disposal of prohibited wastes in Section 5, general site safety and

preparedness, and prevention measures in Section 6, fire protection plan in Section 7, operational procedures in Section 8 that include, but are not limited to, disease vector control, control of windblown solid waste and litter, ponded water, odor management plan, access control, and salvaging and scavenging. The ED has determined that the application adequately addressed each of the applicable items listed by the commenter.

COMMENT No. 22:

Marisa Perales commented that the application includes inadequate information and thus, inadequate evaluation of the potential problems associated with: (A) the location of the floodplain and the risks of flooding; (B) the existence of wetlands; (C) other site-specific issues requiring special considerations; (D) the types of soils at the site, which are subject to extensive erosion and not adequate for use at the landfill for cover, sidewalls, or fill; and (E) the size and extent of the design storms.

RESPONSE No. 22:

The ED has determined that the application adequately addresses the floodplain and the risks of flooding, wetlands, types of soils at the site, soil erosion, and soil used for landfill cover, sidewalls, or fill in accordance with the requirements in Chapter 330. The documentation for floodplains and wetlands, including the location restriction demonstrations, are contained in Part II. The Surface Water Protection Plan and Drainage Plan, including the 25-year and 100-year storm events, are contained in Part III (Attachment 6). The Geotechnical Report in Part III (Attachment 4) contains documentation for the geotechnical testing and description of the subsurface soil materials, including the suitability of the soils excavated from all layers for use as operational and protective cover, and the suitability of the surface soils for use as the final cover system erosion layer. The comments regarding other site-specific issues and extent of the design storms are vague or nonspecific. The ED is unable to determine from these comments what, if any, particular aspect(s) of landfill design are being addressed and, as a result, cannot provide a substantive response.

COMMENT No. 23:

Marisa Perales commented that the proposed permit is inadequate because: (A) the applicant has not presented sufficient justification for the permit term of the life of the facility; (B) a five year term with provisions for expiration and renewal is justified given the facts; (C) many of the permit conditions and aspects of the application that are incorporated into the permit are vague and unenforceable, including but not limited to the site operating plan; and (D) the representations in the application that are incorporated into the permit are vague and unenforceable.

RESPONSE No. 23:

The application has been processed and reviewed in accordance with TCEQ rules. As part of the review process, the ED determined that the permit application complied with the requirements for solid waste landfill facilities seeking a new permit. According to 30 TAC §330.63, a permit is usually issued for the life of the site. A permit may be issued for a specific period when deemed appropriate by the ED. The ED determined that a term limit was not necessary for this application. The ED considers the terms of the draft permit, which are similar to the other MSW permits issued by the TCEQ, to be enforceable. As a result, and in accordance with the TCEQ rules, the ED has prepared the draft permit and recommended its issuance. A draft permit is subject to revision based on comments received. In this case, the ED is not making or recommending such changes. The draft permit continues to represent and contain the ED's recommendations regarding a permit for the proposed facility.

3. **Land Use**

A. Property Values

COMMENT No. 24:

J. C. Benson, Natalie Bernard, Cecelia Bodine, Johnny F. Johnson, Noah P. Campbell, Ruth H. Franks, James H. Henderson, Kenneth R. Hunter, and Russell Robinson commented that the proposed landfill will negatively affect the value of their properties.

RESPONSE No. 24:

The TCEQ has no authority under the Texas Solid Waste Disposal Act to consider property values and devaluation of property in the review of a municipal solid waste permit application. According to 30 TAC §330.53(b)(8), the Commission can consider the impact of a site upon a city, community, group of property owners, or individuals in terms of compatibility of land use in the vicinity, community growth patterns, and other factors associated with the public interest. The ED has concluded that the required information concerning land use compatibility was submitted in the application.

B. Buffer Zone and Screening

COMMENT No. 25:

Marisa Perales commented that the proposed buffer and screenings are inadequate, with insufficient green belts, trees, and wind breaks to protect surrounding land uses.

RESPONSE No. 25:

30 TAC §330.121 requires that a minimum separating distance of 50 feet shall be maintained between solid waste processing and disposal activities and the boundary of the site, unless otherwise authorized by the ED, and that the buffer zone shall not be narrower than necessary to provide for safe passage for fire-fighting and other emergency vehicles. The Applicant states in Part IV (Site Operating Plan) of the application that the buffer zones vary around the perimeter of the site but in no case are they less than 200 feet. The buffer zones are shown in Part III (Attachment 1B – Site Layout Plan).

30 TAC §330.138 requires visual screening of deposited waste materials at a municipal solid waste facility must be provided where the ED determines that screening is necessary or where permit or design requirements so dictate. The Applicant states in Part IV of the application that existing topography and vegetation provide natural screening of deposited waste, there are no residences within 2,000 feet of the permit boundary, and visual screening of deposited waste will be provided as part of normal waste disposal operations and sequence of development.

The ED has determined that the technically complete version of the application site operating plan adequately addresses these items.

C. Incompatible Land Use

COMMENT No. 26:

Marissa Perales commented that the proposed facility is not compatible with the surrounding land uses, including but not limited to residential, agricultural, and other rural land uses with projected growth and development because: (A) odors and other nuisance conditions, especially, given the operating hours, will interfere with the normal use and enjoyment of surrounding properties and homes and interfere with growth patterns in the area; (B) the number and routing of trucks is incompatible with roads and railroad crossings in the area; and (C) the landfill should be located in an industrial area not only because of its nature but also because of the other industrial activities that will be attracted to the area with the landfill.

Peggy Edwards Bowen, Bonnie Dodson, Kenneth R. Hunter, Joan M. Patterson, Bryson K. Sewell, Kevin McGrath, Doris Reed and Mark Sprencel also commented about incompatible land use.

RESPONSE No. 26:

According to 30 TAC §330.53(b)(8), the Commission can consider the impact of a site upon a city, community, group of property owners, or individuals in terms of compatibility of land use in the vicinity, community growth patterns, and other factors associated with the public interest. The ED has determined that the information required in 30 TAC §§330.53(b)(8)(A-E)

concerning land use compatibility was submitted in the application.

D. Alternative Location for Landfill

COMMENT No. 27:

Noah P. Campbell, Bonnie Dodson, James H. Henderson, and James R. Thompson commented that there are other properties in Jack County that don't have water and would be more suitable for a landfill.

RESPONSE No. 27:

Apart from the land use compatibility requirements and the location restrictions in the TCEQ's rules, the TCEQ has no authority over the location selected by the Applicant.

4. **Groundwater**

COMMENT No. 28:

Marisa Perales commented that the proposed permit would result in groundwater contamination because: (A) the site location is on a recharge zone for the Twin Mountains formation, a significant region aquifer; (B) there are lenses of sand, clays, and silt in the aquifer, which creates a complex aquifer system, and that system of sands, clays, and silts has not been adequately evaluated or described; (C) in some areas, there are no confining layers between the landfill and the groundwater, and leaks from the landfills, from leachate management areas, and from spills of wastes, fuels or other liquids could result in contamination of the groundwater; (D) no proper evaluation has been done, and no adequate protections have been established in case of spills or leaks; (E) the landfill would be well below the depth of shallow water, and the protective measures necessary to prevent damage to the liner have not been proposed in the application or required in the permit; (F) the risk of such damage by moving groundwater and pressure on the liner has not been properly evaluated; (G) the proposed landfill will be deeper than shallow perched groundwater, groundwater that has not been identified or characterized, and thus, has not been considered in the design of the landfill or in the consideration of necessary safeguards for these conditions.

Commenters have also expressed concerns about the possibility of groundwater contamination resulting from the operation of the proposed facility due to a shallow water table, and stated that the issuance of the permit would be inconsistent with state policies that prohibit discharges and actions that could result in the pollution of state groundwater.

RESPONSE No. 28:

The TCEQ's MSW rules require protective liners and groundwater and gas monitoring systems. Additionally, the Applicant must address any potential liner ballast issues in the SLQCP in Part III (Attachment 10) of the application. The Applicant has addressed the pertinent issues of liner construction below the water table in the SLQCP and Part III, Attachment 4 (Geotechnical Report).

The Applicant reports that lined areas that are below the highest recorded groundwater elevations will be dewatered as needed to relieve hydrostatic pressure on the liner during and after construction by a temporary dewatering system. The temporary dewatering system will consist of prefabricated composite drains encased in sand filled trenches along the side slopes and landfill floor that discharge into open sumps beyond the lined areas or closed sumps beneath lined areas. The groundwater will be pumped as needed from the sumps into the perimeter drainage system. The ballast requirements for each cell will be based on the highest recorded groundwater elevations. Ballast calculations provided in Part III, Attachment 4 (Appendix 4F) show that the landfill components overlying the geomembrane liner will provide sufficient ballast to offset the hydrostatic forces with a minimum factor of safety of 1.5, in compliance with 30 TAC §330.203 (relating to Special Conditions, Liner Design Constraints).

A groundwater characterization was performed and the application provides for a groundwater monitoring system design based upon site conditions to detect a release should one occur. The application meets all requirements in accordance with the MSW rules regarding the landfills design and operation.

See also, Response Nos. 13, 17, and 18. Inadequacies.

5. **Gas**

COMMENT No. 29:

Kenneth R. Hunter commented that landfills are known for creating gas and air pollution problems. J. C. Benson commented that the explosions of methane gases would cause severe damage to trees and harm wildlife. Other commenters also expressed concern about methane gas seepage.

RESPONSE No. 29:

The Applicant has provided adequate information regarding the proposed landfill gas monitoring system, monitoring program, action plan, remediation plan, and landfill gas control system as required by 30 TAC §330.56(n). This information is found in the Landfill Gas Management Plan in Part III (Attachment 14) of the application. The proposed landfill gas monitoring probe locations and details are shown on Figures 14A.1 and 14A.2, respectively, in Appendix 14A of

the Landfill Gas Management Plan. If the proposed landfill is constructed and operated as shown in the application and as required by the regulations, the ED expects human health and the environment to be protected.

6. **Vectors**

COMMENT No. 30:

Stephen and Cecelia Bodine and J. C. Benson commented that the landfill will attract rats, rodents, flies, mosquitoes, and other animals and insects that might spread diseases. Marisa Perales commented that the site operating plan does not prevent or minimize access by rats, insects, birds and other carriers of disease or the spread of such disease vectors off-site.

RESPONSE No. 30:

30 TAC §330.126 requires the site operator to take the appropriate steps to prevent and control on-site populations of disease vectors using proper compaction and daily cover procedures, and the use of other approved methods when needed. Adequate information regarding control of vectors and disease has been provided in Section 8.11 of Part IV of the application, Disease Vector Control. *See*, Responses to Subsection 3B. Property Values. *See also*, Response No. 21. Inadequacies.

7. **Financial Assurance**

COMMENT No. 31:

Marisa Perales commented that the types and amounts of money proposed for closure and post-closure care are not based on reasonable worst case scenarios with closure by independent third parties, including contingencies for the need to bring water and dirt to the landfill site, the failure of the liner, the shifting of the landfill, etc.

James H. Henderson commented that it is his opinion a performance bond should be required of BFI/IESI to ensure that the landfill will be satisfactorily closed and that funds be available to satisfy claims in the case of environmental or other damages caused by negligence.

RESPONSE No. 31:

The Applicant is IESI TX Landfill LP. 30 TAC §330.56(h) requires permit applicants to submit a cost estimate for closure and post-closure care cost in accordance with 30 TAC §§330.280 – 330.284. 30 TAC §330.281(a) requires owners or operators of MSW facilities provide a detailed written cost estimate, in current dollars, showing the cost of hiring a third party to close the largest area of the landfill ever requiring a final closure anytime during the active life of the unit. 30 TAC §330.283(a) requires owners or operators provide a detailed written cost estimate, in

current dollars, showing the cost of hiring a third party to conduct post-closure care activities for the municipal solid waste unit, in accordance with the post-closure care plan. Continuous financial assurance coverage for closure must be provided until the site is officially placed under the post-closure maintenance period and all requirements of the final closure plan have been approved as evidenced in writing by the executive director.

The application provides closure and post-closure cost estimates in accordance with 30 TAC §§330.280 – 330.284. The Total Closure Costs is $904,796, TCEQ administration of contracts and legal fees is $50,000, contract performance bond is $12,039, and contingency fee (5% of engineering and construction cost) is $40,131. The Total Post-Closure Costs is $963,316 (30 years). The annual post-closure cost is $32,111 and the TCEQ administration of contracts at post closure (10% of post closure cost) is $2,919.

8. **Health Concerns**

COMMENT No. 32:

Marisa Perales commented that the proposed permit does not properly address health hazards, nuisances, and other adverse effects to the public and environment. Joan M. Patterson commented that the gas seepage will cause health concerns regarding asthma. Other commenters also expressed concern about the effects of the proposed landfill on their health, the health of their livestock, and the wildlife in the area.

RESPONSE No. 32:

TCEQ rules state that "a primary concern is that the use of any land for an MSW site not adversely impact human health or the environment. The impact of the site upon a city, community, group of property owners, or individuals must be considered in terms of compatibility of land use, zoning in the vicinity, community growth patterns, and other factors associated with the public interest." 30 TAC §330.53(b)(8).

The ED has received no information that shows that the proposed facility presents a threat to human health or the environment. The ED determined that the proposed landfill was designed in compliance with Texas Solid Waste Disposal Act and with the TCEQ's MSW rules and regulations developed to protect human health and the environment. If the proposed landfill is constructed and operated as shown in the application and as required by the regulations, the ED expects human health and the environment to be protected.

9. **Nortex Regional Planning Commission**

COMMENT No. 33:

Marisa Perales commented that the proposed facility is not compatible with the Regional Solid

Waste Plan prepared by the regional council of governments because the landfill is not necessary to meet the regional needs and is not limited to protect the needs that exist or prevent unnecessary risks to the local communities.

RESPONSE No. 33:

The TCEQ's MSW rules require that permit applicants submit a demonstration of compliance with the regional solid waste plan as part of the permit application process. By law, the Council of Governments (COGs) has the primary responsibility for the regional planning process, and on the adoption of a regional solid waste management plan by Commission order, public and private solid waste activities and state regulatory activities must conform to that plan. Before the Commission issues a solid waste permit, the Commission must consider whether the solid waste facility and the proposed site for the facility are compatible with the local solid waste management plan. The Applicant provided information demonstrating the proposed facility conforms with the Regional Solid Waste Management Plan of the Nortex Regional Planning Commission. The TCEQ has also received documentation of conformance from the Nortex Regional Planning Commission in response to the agency review letter.

10. **Miscellaneous**

A. General Questions and Comments

COMMENT No. 34:

Marissa Perales commented that the applicant has a history of poor compliance at this or other facilities, which requires: (A) denial of the application; (B) close scrutiny of the information in the application; and/or (C) additional conditions and terms in the proposed permit to minimize the likelihood of future violations, such as self reporting of spills, accidents and fires, release of windblown waste.

RESPONSE No. 34:

The permit has not yet been approved by the Commission, therefore, the Applicant does not have a compliance history for this facility

The Applicant (IESI TX Landfill LP) scored "average" for facility operations in Texas based upon the TCEQ compliance history database compiled during the required period (5 years back from the date of the application).

COMMENT No. 35:

Kenneth R. Hunter commented that the City of Jacksboro will only contribute approximately 3% of the waste for this landfill, and that Fort Worth, which is in Tarrant County, and surrounding

counties, with approximately 100,300 people, will be the prime user as well as independent trucking companies. Mr. Hunter asked why is a small county like Jack County being subjected to the noise, road wear from the extra large truck traffic, air and water pollution, and the people of Jack County will not be allowed to use it?

Gloria Sprencel commented that less than 1% of the trash in the dump would be from the City of Jacksboro.

RESPONSE No. 35:

The application states that the facility will serve a population equivalent of 171,000 people, within a service area that includes the City of Jacksboro, Jack County, and surrounding areas. There is no restriction to the permit as to waste acceptance areas for authorized wastes identified in the permit. TCEQ has no authority to place such restrictions in the draft permit.

COMMENT No. 36:

James H. Henderson requested a tabulation and identification of the compounds that will be analyzed in the monitoring wells, the method of chemical analysis, the laboratory methods used, and the frequency of analysis and the limits of detection.

RESPONSE No. 36:

The proposed background and detection monitoring analytes, laboratory methods, and quantification limits are in Table 11-1 in the Groundwater Sampling and Analysis Plan in Part III (Attachment 11) of the application. The frequency of analysis will be quarterly for background monitoring and semi-annual for detection monitoring. The frequency of analysis is provided in Section 2.6.2 of the Groundwater Sampling and Analysis Plan, Frequency and Constituents. *See also*, Response No. 13. Inadequacies.

COMMENT No. 37:

James H. Henderson requested the water treatment and purification plans for effluent fluids percolating through the landfill, and also requests the TCEQ permit requirements for water which is re-introduced into the public streams.

RESPONSE No. 37:

The MSW rules do not require water treatment and purification plans for effluent fluids percolating through the landfill. The management of leachate has been provided in Section 2 of the Leachate and Contaminated Water Plan in Part III (Attachment 15) of the application. The groundwater and surface water protection plan and drainage plan is in Part III (Attachment 6) of the application.

COMMENT No. 38:

James H. Henderson requested tabulation and identification and the probable concentration of the constituent organic and inorganic compounds that may be introduced into the atmosphere at this site, and further requests the analytical methods that will be used for their detection. Mr. Henderson also requested a copy of the air emissions permit to be issued by the State of Texas.

RESPONSE No. 38:

Air quality impacts of municipal solid waste facilities are subject to regulation under the Clean Air Act and TCEQ air quality rules as implemented by the Air Permits Division. MSW permit applicants must comply with the requirements of the air permit exemption in 30 TAC §106.534 and the general requirements for permits by rule at 30 TAC §106.4. The facility is also subject to the Federal Clean Air Act requirements for Municipal Solid Waste landfill's located at 40 C.F.R. 60.750.

COMMENT No. 39:

James H. Henderson requested the projected growth rate be recomputed based on the observable growth and that a study of traffic flow be conducted.

RESPONSE No. 39:

The Applicant provided a transportation analysis in Part II of the application in compliance with 30 TAC Chapter 330. The information submitted in the application was determined by the ED to meet the requirements in 30 TAC, Chapter 330. *See also*, Response No. 19. Inadequacies.

COMMENT No. 40:

Maude Farris, Kenneth R. Hunter, Gloria Sprencel, Joan M. Patterson, Bonnie Dodson, Stephen and Cecelia Bodine commented about excessive noise and lights will occur at the landfill.

RESPONSE No. 40:

30 TAC §330.5 prohibit the owner or operator of an MSW facility from operating the facility in such a manner as to cause the creation and maintenance of a nuisance. In addition, if the permit is approved, it would not limit the ability of a landowner to use common law remedies for a nuisance in response to activities that interfere with his use and enjoyment of his property.

Complaints regarding the facility may be made by contacting the Abilene Regional Office, at 325-698-9674, or the toll-free Environmental Violation Hotline at 1-888-777-3186. Complaints may also be made through the Commission's Web site by following the menu for "Reporting"

and "Reporting Environmental Problems to TCEQ" at http://www.tceq.state.tx.us. If the facility violates a term of the permit or the TCEQ's regulations, the permittee will be subject to an enforcement action.

COMMENT No. 41:

Maude Farris and J. C. Benson commented about odors generated by the, including the smell of decomposing trash, methane gas, and carbon monoxide. Other commenters also expressed concerns regarding possible odors from the proposed facility.

RESPONSE No. 41:

Adequate information regarding odor prevention has been provided in Section 8.10.2 of Part IV of the application, Odor Management Plan. *See also*, Response No. 21. Inadequacies.

COMMENT No. 42:

Mark Sprencel, James R. Thompson, and Linda Henderson Thompson commented that the landfill will cause windblown trash. Joan M. Patterson commented that a landfill on the west side of Fort Worth on Interstate 20 in Tarrant County has windblown waste and is operated by the same company who has applied for this permit. Other commenters also expressed concerns regarding windblown waste.

RESPONSE No. 42:

Adequate information regarding control of windblown waste and litter has been provided in Section 8.5 of Part IV of the application, Control of Windblown Solid Waste and Litter. *See also*, Response No. 21. Inadequacies, and Response No. 26. Buffer Zone and Screening.

The referenced landfill in Tarrant County is permitted and operated by Waste Management of Texas, Inc., Westside Recycling & Disposal Facility, MSW Permit No. 1019A. Complaints regarding this facility may be made by contacting the TCEQ Dallas/Fort Worth Regional Office, at 817-588-5703, or call the toll-free Environmental Violation Hotline at 1-888-777-3186.

B. Local and Elected Officials

COMMENT No. 43:

Jerry Adams, former Jack County Commissioner, Precinct 2, commented that he strongly opposes the landfill being proposed in his precinct and request the application be denied.

Bryson K. Sewell, Jack County Commissioner, Precinct 2, commented, that as a county commissioner for Jack County, he expresses support for his constituents who oppose the

proposed landfill and expresses concerns about the impacts the proposed landfill will have on the community.

RESPONSE No. 43:

The Executive Director has noted these comments in opposition to the Application.

The TCEQ bases its decision on this application on applicable state and federal laws. This application must comply with the requirements of the Texas Solid Waste Disposal Act, codified in Chapter 361 of the Texas Health and Safety Code, and 30 Texas Administrative Code (TAC) Chapter 330.

The three-member Commission is appointed by the governor and is responsible for all permitting decisions issued by the agency. The commission has delegated authority to the ED to review permits. The ED is allowed to approve certain permits when an application has not been contested. However, any permit application that is contested will be sent to the commission for a decision on whether a contested case hearing should be granted or denied.

COMMENT No. 44:

State Senator Craig Estes, Senate District 30, commented that he supports the landfill because the project is deemed appropriate and necessary by the City of Jacksboro.

State Representative Richard L. "Rick" Hardcastle, House District 68, commented that he believes the proposed facility will provide necessary solid waste disposal capacity, in an environmentally protective manner, and other substantial benefits to the citizens of Jacksboro and Jack County. Representative Hardcastle also commented that the NORTEX Regional Planning Commission has reviewed the project, found it to be in conformance with the regional solid waste management plan, and recommended that the TCEQ approve the permit application.

RESPONSE No. 44:

The Executive Director has noted these comments in support of the Application.

CHANGES MADE IN RESPONSE TO COMMENT

No changes to the draft permit have been made in response to public comment.

Respectfully submitted,

Texas Commission on Environmental Quality

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By _____
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